

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WORCESTER DIVISION

DONALD P. SPEAKMAN, STEPHEN H.	§	
WEDEL and MARK L. ROBARE,	§	
Individually and On Behalf of All Others	§	
Similarly Situated,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 4:04-cv-40077-FDS
v.	§	
	§	
ALLMERICA FINANCIAL LIFE INS. &	§	
ANNUITY CO., FIRST ALLMERICA	§	
FINANCIAL LIFE INS. CO., and	§	
ALLMERICA FINANCIAL CORP.	§	
	§	
Defendants.	§	

**PLAINTIFFS' UNOPPOSED MOTION TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs make this Unopposed Motion to File Second Amended Complaint, and state as follows:

1. On May 23, 2006, after extensive arm's length negotiations, Plaintiffs and Defendants entered into a Stipulation of Settlement (the "Proposed Settlement").
2. The Proposed Settlement resolves all the claims and counterclaims in this lawsuit, and provides substantial relief to the Class, as defined in the Proposed Settlement.
3. The Proposed Settlement at 42, 12.1.1 provides for "Plaintiffs' filing of a motion for leave, unopposed by Defendants, to file a Second Amended Complaint that is brought on behalf of the putative Class as defined above and asserts claims and allegations that are in all material respects the same as those asserted in the First Amended Complaint . . . ."
4. The only change between the First Amended Complaint and Second Amended

Complaint is to modify the Class definition to conform to the one in the Proposed Settlement.<sup>1</sup>

5. Based upon the foregoing, Plaintiffs move that the Court to grant the Unopposed Motion to File Second Amended Complaint that is attached hereto as Exhibit "A".

Dated this 21st day of June, 2006.

Respectfully submitted,

/s/ Robert W. Biederman

Stephen L. Hubbard

Robert W. Biederman (BBO No. 562279)

**HUBBARD & BIEDERMAN, LLP**

1717 Main Street, Suite 4700

Dallas, Texas 75201

Telephone: (214) 857-6000

Facsimile: (214) 857-6001

[slhubbard@hblawfirm.com](mailto:slhubbard@hblawfirm.com)

[rwbiederman@hblawfirm.com](mailto:rwbiederman@hblawfirm.com)

Nancy Freeman Gans BBO No. 184540)

**MOULTON & GANS, P.C.**

55 Cleveland Road

Wellesley, MA 02481

Telephone: (781) 235-2246

Facsimile: (781) 239-0353

[nfgans@aol.com](mailto:nfgans@aol.com)

ATTORNEYS FOR PLAINTIFFS

---

<sup>1</sup> There only differences between the modified definition of the class in the Second Amended Complaint and in the First Amended Complaint are that it (i) includes only persons who entered the Trail Program and signed a DAC Note while the prior definition included all Trail Program participants; and (ii) excludes all persons who prior to April 10, 2006, entered into settlements with Defendants in connection with the Trail Program. In connection with this modified definition, it also differs from the one set forth in the original Motion for Class Certification in the following respects: (i) it excludes those individuals who entered into settlements with Defendants in connection with the Trail Program prior to April 10, 2006, (ii) includes those individuals who were managing directors or branch managers, and (iii) includes those individuals who entered into DAC Notes with Defendant First Allmerica Financial Life & Annuity Co. As to the last category, prior to the December 14, 2005 hearing on Plaintiffs' Motion for Class Certification Plaintiffs had already moved the Court to modify the then class definition to include such individuals.

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 21, 2006.

Andrea J. Robinson, Esq.  
Jonathan A. Shapiro, Esq.  
Eric D. Levin, Esq.  
Brett R. Budzinski, Esq.  
WILMER CUTLER PICKERING HALE and DORR LLP  
60 State Street  
Boston, MA 02109  
(617) 526-5000 fax

Brian E. Whiteley (BBO No. 555683)  
C. Alex Hahn (BBO No. 634133)  
SCIBELLI, WHITELEY & STANGANELLI, LLP  
50 Federal Street, 5<sup>th</sup> Floor  
Boston, MA 02110  
(617) 722-6003 fax

/s/ Robert W. Biederman  
ROBERT W. BIEDERMAN